IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

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WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

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PRESENT

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THE HON'BLE MR JUSTICE A.GOPAL REDDY

-

WRIT PETITION NO : 3529 of 2003

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Between:

1 Mr. Y.Srinivas Rao s/o Sri Y.Gnanaprakash Rao
r/o Kuchipudi Village, Amrathulur Mandal ,
Guntur District.
2 Mr. Y.Surendranath s/o Sri Y. Gnanaprakash
r/o Kuchipudi Village, Amrathulur Mandal ,
Guntur District.

..... PETITIONERS

AND

1 Executive Officer Kuchipudi group of Temples ,
Kuchipudi Village , Amrathulur Mandal,
Guntur District.
2 Sub- Inspector of Police, Vemur Police Station,
Vemur Mandal, Guntur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to direct the respondents not to interfere with the possession of the petitioners over their land admeasuring 3 acres of land in Survey No.48 (old) 45/1 (new) of pulichinthalpalem Village, Vemur Mandal, Guntur District and seeking to continuously interfere with the possession of the petitioners over the above land as illegal, arbitrary and violative of Articles 14 and 19 of the constitution of India and consequently to direct the respondents to return the 72 bags of paddy to the petitioners and not to interfere with possession of the petitioners admeasuring

Ac.3.00 in Sy.No.48 (old) and 45/1 (new) of pulichinthalpalem, Vemur Mandal, Guntur.

Counsel for the Petitioners: MR.R.RAGHUNANDAN

Counsel for the Respondent No.: GP FOR ENDOWMENTS

The Court Made the Following ORDER:

Petitioners, who are claiming to be the owners and possessors of Ac.3.00 of land in S.No.48 (old) and 45/1 (new) of Pulichinthalapalem village, Vemur Mandal, Guntur District, filed O.S.No.275 of 2000 on the file of the Principal Senior Civil Judge, Tenali for a permanent injunction restraining the defendants therein alleging that they are interfering with the possession of the land. Petitioners obtained temporary injunction in I.A.No.2047 of 2000 on 16-6-2000 and also obtained police protection in I.A.No.2428 of 2004, which was ordered on 15-12-2000. The first respondent Devasthanam filed I.A.No.2685 of 2000 for impleading Koganti Trust as a party to the suit on the ground that the suit schedule property belongs to the trust, which was endowed property under the care of first respondent and the said Interlocutory Application was dismissed. Thereafter the first respondent filed appeal before the Assistant Collector, Tenali against the issuance of Pattadar Passbooks in favour of the petitioners' father, and the same was dismissed on 31-1-2001.

It is the case of the petitioners that all of a sudden, first respondent entered into the fields and had taken up the thrashing operations of the freshly cut and stored paddy in the field. The paddy was of the BPT5204 variety and was packed in 72 bags. When the first respondent along with others had loaded the paddy on to a tractor, the petitioners insisted to unload the paddy. Then the same was stored in Kisan Sevasang rice mill, Jampani. Thereafter the petitioners informed the second respondent about the illegal action of the first respondent. As no action is taken, he moved this court by way of present writ petition.

While admitting the writ petition, this court directed the first respondent to release 72

bags of paddy belonging to the petitioners, subject to the petitioners furnishing bank guarantee in the value of Rs.42,000/-. Pursuant to the interim order, the petitioners furnished bank guarantee for a sum of Rs.42,000/- and sought for release of paddy. Since the paddy has not been released in favour of the petitioners, they filed C.C.No.639 of 2003, which was disposed of on 29-7-2003, subject to the petitioners furnishing bank guarantee for a period of two years in the value of paddy seized by the first respondent, within a period of one week from the date of order and the first respondent shall release the paddy in favour of the petitioners. When the petitioners furnished bank guarantee for Rs.42,000/- and approached the first respondent for release of 72 bags of paddy seized, and when the same was not released in their favour, petitioners filed C.C.No.1271 of 2003 to punish the first respondent for violation of the orders of this court in C.C.No.639 of 2003 dated 29-7-2003.

In the counter affidavit filed by the first respondent in C.C.No.639 of 2003, it is clearly stated that it is not 72 bags paddy as alleged by the petitioners, and only 47 bags 15 Kgs paddy has been received from the land of the tenants. When demanded for unconditional bank guarantee for a higher period, the petitioners did not turn up and got issued legal notice on 12-4-2003. The reply notice got issued by the first respondent dated 25-4-2003 sent to the petitioners calling upon them for furnishing bank guarantee, was returned with an endorsement “Left, where abouts not known. Returned to the sender”. Thereafter he issued another reply notice, which was also returned with the same endorsement, which clearly shows that the petitioners are avoiding to receive the reply notice and failed to produce bank guarantee for release of the paddy. It is not disputed that 47 bags 15 kgs. paddy was released to the petitioners after filing Contempt Case, on petitioners furnishing the bank guarantee.

But the learned counsel for the petitioners contends that the respondents have seized 72 bags of paddy and they have to be released in favour of the

petitioners. Whereas the respondents contend that 72 bags, which were seized are not full bags. It comes to only 47 full bags, which have to be released to the petitioners.

In this writ petition first respondent-Executive Officer filed counter affidavit stating that the petitioners' father acted as trustee of the said institution as per ATC No.53 of 1994 and the land, which is belonging to trust cannot be claimed as the entire property is a trust property and Gogineni Koteswara Rao and Gogineni Vasantha Rayudu, are the tenants of the said land of Ac.3.15 cents. They paid Maktha as usual for the said land and it was collected by the Executive Officer. Even from the last three years also the said Maktha has been paid by the said tenants.

Along with the counter, a bunch of documents were filed including the judgment and decree passed by the Civil Court in O.S.No.98 of 1956, dated 20-3-1958, on the file of Subordinate Judge, Tenali. Learned counsel for the petitioners has taken lead of the judgment and submits that the ancestors of the petitioners are the owners of Acs.1.01 cents in S.No.45 out of Ac.4.62 cents and whereas the plaintiffs claimed only Ac.3.00 out of the total extent of 6.60 cents of S.No.48 and Ex.B.6 is a sale deed dated 2-5-1914 executed by one P. Nagalingam in favour of the father of defendants 4 to 6 in respect of Acs.1.50 cents. Ex.B.7 is an exchange deed dated 25-7-1935. In view of the same the petitioners are in possession of Ac.3.00 as their own land as if it is not a trust property. When the tenants of the trust interfered with the possession, the petitioner filed the suit and obtained permanent injunction. When the first respondent was unsuccessful in impleading Koganti Trust as a party to the suit, it cannot take the law into its hands and remove the paddy.

On the other hand, learned counsel for the respondents contends that it is the tenants who are paying the Maktha to the said temple since last several years, which was taken by them and which was realized pursuant to the orders passed by this court. The Vernacular documents were filed by other parties in the suit before

the Deputy Commissioner under Section 133 of the Act to deliver the property, which is in custody of the petitioners.

In view of the same, this court in exercise of its jurisdiction cannot decide the title or possession of the parties with regard to the land, which is the subject matter of the suit, when the petitioners allege that the first respondent high-handedly took away the paddy harvested by them

On the other hand the respondents contend that it is the tenants who are to be delivered the said paddy. But once there is an injunction in operation against the tenants, taking away the paddy by the first respondent, when he is unsuccessful in impleading the trust as a party to the suit, is nothing but disobedience of the injunction order passed by the civil court. In view of the same, petitioners are at liberty to move an application with appropriate pleadings before the civil court with regard to the removal of the paddy in spite of injunction granted by the civil court. It is for the civil court to consider and decide whether the paddy was harvested by the petitioners or by the tenants. Pending the suit no finding can be given by this court in these proceedings under Article 226 of the Constitution of India. The respondent Devasthanam is also at liberty to move an application by taking recourse to the provisions under Section 83 of the Act for due eviction of the petitioners, if they have unauthorisedly occupied the land. All the contentions with regard to the title to the said property and the right of the petitioner to continue in possession are to be adjudicated in appropriate proceedings before the civil court. The bank guarantee furnished by the petitioners shall be subject to further orders that may be passed in appropriate proceedings.

Accordingly the Writ Petition is dismissed. No costs.

A. Gopal Reddy, J.

7th July, 2004

js.

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 Executive Officer Kuchipudi group of Temples ,
Kuchipudi Village , Amrathulur Mandal,
Guntur District.
2 Sub- Inspector of Police, Vemur Police Station,
Vemur Mandal, Guntur District.

3 Two CCs to G.P. for Endowments, High Court Buildings,

High Court of A.P., Hyderabad.(OUT)

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